

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC, WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC.,  
COAL RIVER MOUNTAIN WATCH,  
INC., and SIERRA CLUB**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. \_\_\_\_\_**

**INDEPENDENCE COAL COMPANY, INC.,  
and JACKS BRANCH COAL COMPANY,**

**Defendants**

**DECLARATION OF JAMES TAWNEY**

I, James Tawney, state and affirm as follows:

1. I was born in Spencer, West Virginia and raised in Clay County, West Virginia. I currently live in Nicholas County, West Virginia.
2. I have been a member of the West Virginia Highlands Conservancy for four years. The Conservancy, with approximately 1800 members, is a nonprofit membership organization located in West Virginia and for the past three decades has been a leader in citizen efforts to protect West Virginia's land and water resources from the effects of illegal coal mining.
3. I have been a member of Ohio Valley Environmental Coalition (OVEC) for five years. OVEC, with approximately 1,500 members, has a mission to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, grassroots organizing and coalition building, leadership development, and media outreach.
4. I have spent most of my life in Clay and Nicholas Counties. As a kid I extensively traveled the area with family members and while working. In my adult years, my wife and I frequently explore and travel around the Gauley River watershed. I have a particular interest in and concern for the Twentymile Creek watershed.
5. I am very concerned about water quality in Twentymile Creek watershed and the cumulative impacts on water quality from intensive coal mining. I think about the fish, other aquatic life and waterfowl that live in the watershed and I am very concerned and angry about the harm the pollution from the mines is causing.

6. I am particularly concerned about mining companies discharging toxic amounts of selenium. I have heard about the potential impacts of too much selenium on fish and waterfowl. The threats selenium poses to fish and waterfowl are very upsetting to me.

7. As I understand it, Jacks Branch Coal Company holds NPDES permit WV0093912 which regulates water pollution discharges to Hughes Fork of Bells Creek of Twentymile Creek of the Gauley River.

8. I also understand that Jacks Branch Coal Company has been violating the selenium discharge limits in the permit noted above. The selenium pollution coming from the mine greatly concerns me and decreases my enjoyment downstream of the mines. If Jacks Branch Coal Company were to comply with the pollution limits in the permit, I would enjoy the stream more and be less concerned about impacts to the aquatic life and waterfowl living in and near the streams.

9. I first visited Bells Creek when I was about twelve and delivered newspapers to homes along Bells Creek. I had the paper route for several years and made the trip up Bells Creek hundreds of times. I always enjoyed looking at the creek and the wildlife.

10. As an adult, I have driven up Bells Creek past Pond Gap many hundreds of times taking a short cut to and from the Charleston area. I always enjoyed looking at the creek during those trips.

11. Over the years during those trips, I have stopped along Bells Creek downstream of Hughes Fork approximately fifteen times to picnic by the creek. My wife and I really enjoy these times but I am increasingly concerned about water quality. I would enjoy the picnics and our time along Bells Creek a lot more if I knew the coal companies were complying with the selenium limits in their pollution permits. We last picnicked at Bells Creek in April of 2010 and intend to return to the area and picnic there in the future.

12. I have also fished along Bells Creek a few times including once earlier this summer. During my most recent trip, I didn't catch any fish but if I did catch fish I wouldn't keep or eat them because of my concern about water pollution including selenium.

13. I am also very concerned that the pollution in Bells Creek is contributing to the pollution in Twentymile Creek. Twentymile has serious water quality problems and each tributary that adds to the pollution makes it that much worse.

14. As I understand it, there are ways the coal companies could treat their discharges to reduce the amount of selenium they put into the stream and I strongly believe they should use them so that Bells Creek and Twentymile Creek won't be further harmed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27th day of August 2010.

  
James Tawney